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**Goodwill Industries of
Northern New England**

Fax

To: Mr. G. John Heyer-President's
Committee for Purchase **From:** Kevin C. Baack, Executive Director

Fax: 703-603-0655 **Pages:** 3

Phone: **Date:** 1/13/2005

Re: Docket No. 2004-01-01 **CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Attached is my letter expressing Goodwill Industries opposition to the proposed notice of rulemaking [Docket No. 2004-01-01]

Please call Suzanne Appell at 207-774-6323 if you do not receive all three pages of this fax. Thank you.

GOODWILL INDUSTRIES OF NORTHERN NEW ENGLAND

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Judith T. Stone
PRESIDENT OF
THE BOARD

Kevin C. Baack, Ph.D.
EXECUTIVE DIRECTOR

*Through employment,
residential, educational
and support services,
Goodwill works to enhance
the social and economic
independence of people
with disabilities and
others who experience
barriers to such
independence.*
-Mission Statement



January 12, 2005

Mr. G. John Heyer
President's Committee for Purchase from People
Who Are Blind or Severely Disabled
1421 Jefferson Highway
Jefferson Plaza 2, Suite 10800
Arlington VA 22202-3259

Dear Mr. Heyer:

On behalf of Goodwill Industries of Northern New England and Northern New England Employment Services, we are writing to express our opposition to the proposed notice of rulemaking [Docket No. 2004-01-01] from the President's Committee for Purchase From People Who Are Blind or Severely Disabled. The proposed rulemaking on governance standards for central nonprofit agencies and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program exceeds the scope of the Committee's authority and Congressional mandate.

Goodwill Industries of Northern New England and Northern New England Employment Services, cooperate in providing employment to 85 individuals at 15 government locations in Maine and New Hampshire. NISH has been an invaluable resource in developing this workforce.

The authorizing statute for the JWOD program clearly delineates the powers and responsibilities of the Committee (41 CFR 51-2.2, 41 U.S.C. § 46). We do not see how these powers and responsibilities extend to governance standards or executive compensation. Both Congress and the Internal Revenue Service (IRS) have jurisdiction over these areas. The Committee is mandated with determining which commodities and services should be on the Committee's procurement list and fair market prices, and informing federal agencies about the JWOD program.

As participating JWOD agencies, we would hope that the Committee would comply fully with the Congressional intent to provide employment and training opportunities for persons who are blind or have other severe disabilities and not delve into areas for which it lacks both the Congressional and statutory authority necessary to promulgate governance and other standards. The proposed rules will impact the entire community of participating nonprofit agencies, despite the Committee's own comment that the overwhelming majority of JWOD-affiliated central nonprofit agencies and nonprofit agencies operate in an ethical and accountable manner.

The statutory authority and regulations, as well as the legislative history, in addition to the applicable federal case law, do not support the Committee's actions. Furthermore, we have concerns understanding the rationale for the

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G. John Heyer
January 12, 2005
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Committee to purport to assume regulatory authority over the governance standards for nonprofit, tax-exempt 501 (c) (3) organizations, since numerous federal entities already exist to regulate these organizations.

We believe that the proposed rules do not advance the Congressional intent of the enacting JWOD legislation and would, if adopted, diminish the program's ability to increase employment opportunities for the blind and disabled. We respectfully request that the Committee withdraw these rules.

Congress, through the Senate Finance Committee, is already scrutinizing the issue of governance standards of nonprofits. Primary oversight over a wide range of financial and governance affairs, including executive compensation, resides with the Internal Revenue Service (IRS). The IRS is empowered to impose intermediate sanctions on these few nonprofits not in compliance with applicable laws and regulations. It is duplicative for the Committee to attempt to promulgate such rules aimed at nonprofit organizations. We recommend that you allow the Senate Finance Committee and the Internal Revenue Service to address any nonprofits which violate applicable laws and regulations.

In addition, the proposed rules raise significant Constitutional concerns. Both nonprofit and for-profit agencies regularly compete for government contracts. Nonprofits compete against companies as large as Lockheed Martin and Boeing. We have not found other circumstances where the ability to participate in government contracting is contingent upon a certain corporate governance structure of the participating vendor. Similarly, there is not an inquiry into the executive compensation level of the participating agency versus that of the highest paid SES, career Federal government employee for vendors to be permitted to compete for government contracting opportunities. If the proposed rules were to become final, however, only nonprofit agencies desiring to participate in the JWOD program would be subject to this unique level of regulation. There is no rationale for such disparate treatment of nonprofit organizations desiring to participate in the JWOD program and no precedent for establishing a cap on executive compensation or imposing governance rules as a prerequisite to participation in government contracting.

Information about nonprofit CEO compensation is readily available to the public and Committee staff on the Internal Revenue Service's 990 Form. We conclude that the proposed policy is misguided and beyond the scope of the Committee's authority and we strongly recommend that the proposed rules be withdrawn.

Yours truly,



Kevin C. Baack, Ph.D.
Executive Director

cc: George Kessinger, President - Goodwill Industries International